SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)
Citation: Nova Scotia (Health) v. G.H.C., 2009 NSSC 393

Date: 20091221
Docket: SFPAAPA-063193
Registry: Port Hawkesbury

Between:

Minister of Health

Petitioner

v.

G. H. C.

Respondent

Editorial Notice

Identifying information has been removed from this electronic version of the judgment.

Judge:	The Honourable Justice Moira C. Legere Sers
Heard:	October 27, 2009, in Port Hawkesbury, Nova Scotia
Written Decision:	December 21, 2009
Counsel:	Lindsay McDonald, for the Minister of Health Sam Moreau, for the Guardian ad Litem Guy Arsenault Wayne MacMillan, for B. C.

By the Court:

[1] This Adult Protection matter first came before the Court on March 11, 2009. I borrow from the chronology as set out in the Minister's memorandum filed October 26, 2009.

[2] Pursuant to Section 10 of the *Act*, the Minister of Health, through its agent, placed G. H. C. in an approved facility, the * in *, believing that he was unable to adequately care for himself.

[3] On March 11, 2009, Mr. Blaine MacQuarrie, the adult protection social worker; Ms MacDonald counsel for the Minister; the yet to be appointed Guardian Ad Litem, Mr. Arsenault; and several family members appeared for this hearing.

[4] The Court noted at that time that Mr. C.'s family had struggled for some time over Mr C.'s placement. They expressed concerns about him being placed at a distance from his home. The Court was informed that he was on a waiting list for the * in *. The family has made it clear throughout that the * is the preferred placement.

[5] On that appearance, the Court issued an order, dated March 11, 2009, as follows:

> "1. That G. H. C. (d.o.b. * September 1918) is found to be an adult in need of protection within the meaning of ss.3(b)(ii) and under ss.10(2) of the *Adult Protection Act;*
>
> 2. That G. H. C. is declared not mentally competent to decide whether or not to accept the assistance of the Minister, pursuant to ss.9(3)(a) of the *Adult Protection Act;*
>
> 3. That Guy Arsenault is appointed at Guardian ad Litem for G. H. C.;
>
> 4. That the Applicant, Minister of Health, is authorized to provide G. H. C. with services, including placement within a facility approved by the Minister, pursuant to ss.9(3)(c) of the *Adult Protection Act* and as effected pursuant to ss.10(1) of the *Act* on 6 March 2009."

[6] The matter was set over for completion of this first hearing to Thursday, April 23, 2009.

[7] On April 23, 2009 the family once again indicated their concerns about placement. The Minister, through counsel, advised that Mr. C. had settled in the * in *. It was the Minister's position that he had been appropriately placed. The Minister confirmed that Mr. C. was on a wait list for the * and the Minister sought a six month order.

[8] The Guardian ad Litem indicated that Mr. C. was an adult in need of protection and supported his current placement for the interim but supported a move to the * as well. Counsel for the Guardian ad Litem indicated that they would support giving Mr. C. some priority to move him to the *.

[9] Mr. MacQuarrie, the adult protection worker for the Minister of Health, advised the Court that there are persons being placed at the * now that have been on the wait list since 2007. He advised that it was unlikely that Mr. C. would be moved from the * prior to September 2009. He suggested putting him on the wait list for the *, as it would raise his chances of being placed closer to his home.

[10] Counsel for the Guardian ad Litem indicated some concern that the agreement to place him on the * list would have some adverse affect on his placement in the *. The matter was adjourned to September 8, 2009.

[11] At that time, the Minister gave notice that it sought to dismiss the proceeding on the grounds that placement having taken effect, Mr. C. was not a flight risk, that he was no longer an adult in need of protection within the meaning of the legislation. The six month order operated until the 23rd of October 2009.

[12] The family opposed the placement plans and indicated their concern regarding their father's depression and deteriorating health as a result of being in a closed unit. They were concerned about movement from a closed unit to an open unit and were concerned about failure to move him to the *.

[13] It was clear to the Court at that time, that while Mr. C. could not go home, he remained an adult in need of protection, was unable to care for himself and the plan put forward by the Minister was not approved by the family.

[14] The matter became contested. In order to resolve the issues as to the determination whether the intervention and resolution proposed by the Minister

represented the best interest of the adult, the matter was put over to October 28, 2009, for a full hearing. The court requested a geriatric assessment report be filed. The family indicated that they were concerned with the decline in Mr. C.'s condition and believed that it was connected to his placement.

[15] The Guardian ad Litem then indicated that the * was the preferred place for Mr. C.. He advised the Court that he had difficulty getting past a barrier with Mr. C., commenting that he felt he was in a depressed state and fed up with how things had gone for him and that may be caused by his placement.

[16] Mr. B.C. appeared with counsel and the application for leave was set over to October 27th 2009 when Mr. C.'s application for leave was granted with reasons deferred.

Reasons for Granting Leave

[17] On the leave application, Ms. McDonald, for the Minister of Health, contested the application for standing and did not consent to the release of the files for the family's review.

[18] Counsel for the Guardian ad Litem, indicated that he was not opposed to a family member having standing.

[19] Mr. MacMillan, counsel for Mr. B. C., indicated that they were not seeking to have the Guardian ad Litem removed or to have a family member represent their father as Guardian ad Litem on the issue of capacity to care for himself. They wanted to be heard on the issue of placement and the Minister's plan.

[20] With some scheduling difficulty, the matter has been set down to January 18, 2010, at 12:00 p.m. and January 22, 2010, starting at 10:00 a.m. for a full day.

[21] Section 9 (3) of the *Act* states as follows:

> " Where the court finds, upon the hearing of the application, that a person is an adult in need of protection and either ....

> ....
>
> the court shall so declare and may, where it appears to the court to be in the best interest of that person,
>
> (c) make an order authorizing the Minister to provide the adult with services, including placement in a facility approved by the Minister, which will enhance the ability of the adult to care and fend adequately for himself or which will protect the adult from abuse or neglect"

Subsection (5) states as follows:

> "An order made pursuant to subsection (3) expires six months after it is made"

and ss..6):

> "An application to vary, renew or terminate an order made pursuant to subsection (3) may be made by the Minister, the adult in need of protection or an interested person on his behalf, or a person named in a protective intervention order upon notice of at least ten days to the parties affected which notice may not be given in respect of a protective intervention order earlier than three months after the date of the order."

[22] On September 8, 2009, prior to the termination or expiry of the current order, the Minister gave notice it sought dismissal of the proceedings on grounds that G. H. C. was appropriately placed...and was thereby no longer an adult in need of protection within the meaning of the legislation.

[23] The Minister gave notice it sought dismissal, the Guardian ad Litem and family members, not yet parties to the action, made it clear to the Court they did not consent to the dismissal. The family did not agree that their father was no longer an adult in need of protection within the meaning of the legislation.

[24] Further, the Guardian ad Litem and the family members, interested persons, made it very clear that they wanted a review of the geriatric assessment, did not accept the conclusions of the assessment and, further, did not accept the placement.

[25] From the Court's perspective, there has not been a hearing on these issues. The matter has been deferred to January, 2010, as this was the first available

opportunity for all counsel to be present and to have appropriate information to place before the Court for a thorough consideration of the issues.

[26] Section 12 of the *Act* indicates as follows:

> " In any proceeding taken pursuant to this Act the court or judge shall apply the principle that the welfare of the adult in need of protection is the paramount consideration."

[27] Thus, the hearing to take place will determine whether this adult continues to be adult in need of protection in accordance with the *Act*, and if he is an adult in need of protection, whether the plan reflects his best interests such that placement in the facility approved by the Minister actually does enhance his ability to care and fend adequately for himself or which will protect him from abuse or neglect as per section 9(3)(c)of *the Act.*

[28] I adopt paragraph 24 of the case sited by the Minister of Health, **Minister of Health (Nova Scotia) v. R.G.** (CA 224397); 2005 NSCA 59 at page 9 of 20 where in the Court of Appeal referred to the "Driedger's modern approach" as widely accepted in this country. Iacobucci, J., in **Bell Express Vu Limited Partnership v. Rex et al.** [2002] 2 S.C.R. 559; 287 N.R. 248;166 B.C.A.C. 1: 271 W.A.C. 1, at paragraph 26 explains:

> "Today there is only one principle or approach, namely, the words of an Act, are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the **Act**, the object of the **Act** and the intention of Parliament."

[29] The scheme of this *Act* as stated in **N.S. v. R.G.** at page 11 of 20 is as follows:

> "2. The purpose of this Act is to provide a means whereby adults who lack the ability to care and fend adequately for themselves can be protected from abuse and neglect by providing them with access to services which will **enhance** their ability to care and fend for themselves or which will protect them from **abuse or neglect**." (emphasis mine)

[30] The concerns of the family as stated to the Court and, in part, endorsed by the Guardian ad Litem, is that the current placement of Mr. C., away from his

family and away from his home, in a locked unit in the *, is creating a situation which is causing his mental and emotional health to deteriorate. That is the issue.

[31] The intervention of the Minister is not absolute, without scrutiny and without accountability.

[32] It is clear that there are issues to be resolved and that a hearing has become necessary. Rule 35.01 of the Civil Procedure Rules authorizes a person to make a motion to be added as a party, including as an intervener.

[33] Rule 35.08 (1) of the Civil Procedure Rules reads as follows:

> "Judge joining party
>
> 1) A Judge may join a person as a party in a proceeding at any stage in a proceeding.
>
> 2) It is presumed that the effective administration of justice requires each person who has an interest in the issues to be before the Court in one hearing."

[34] In this circumstance, the legislation authorizes extensive intervention in an adult life. The allegations by the Minister includes a suggestion that this person is not competent to make decisions for himself. The Guardian ad Litem, who was approved by some family members, and continues to be accepted, has the responsibility to represent and protect the adult in this litigation process.

[35] While there are family members who may agree that Mr. C. is not currently competent to make decisions for himself, there is not consensus amongst those who are significantly affected and implicated in his life as to the type of intervention, the extent of intervention and the manner of intervention.

[36] The Minister is not prejudiced by the addition of this party. Adjournments have been given, pre trials set to clarify issues, attempts been made to assist the family in coming to an understanding of their father's plight, and there remains disagreement as to what represents the best interest of Mr. C. and the extent to which he is able to understand the nature and consequences of this intervention and the consequences of his placement.

[37] Those are critical issues to be heard and can not and must not be easily dismissed. Having reviewed that, I am satisfied that it will do no prejudice to the Minister and it would be in the interest of the administration of justice that the family of Mr. C. have a right to be heard, independently of the Guardian ad Litem, as to what represents the best interests of Mr. C. should he continue to be found to be an adult in need of protection.

[38] The family members have a significant interest in the nature and extent of the intervention of the Minister in the life of their father. The input of the family may be different, possibly more subjective than the counsel of the Guardian ad Litem.

[39] The family have a personal interest in the outcome of this proceeding and they and their father will have to live with the results of this intervention. They will bear the consequences and their voices ought to be heard and weighed with all other evidence to allow the court the best evidence that hopefully will address the best interests of Mr. C..

[40] For these reasons, I allowed the application of B. C. to be added as a party to this proceeding.

Moira C. Legere Sers, J.